United States Court of Appeals

for the Second Circuit

APPENDIX

76-2118

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 76-2118

PATRICK VINCENT REO,

Petitioner-Appellant,

vs.

MAURICE H. SIGLER, Chairman,
United States Parole Board and
GEORGE C. WILKINSON, Warden,
Federal Correctional Institution,
Danbury, Connecticut,

Respondents-Appellees.

On Appeal From the United States District
Court For the District of Connecticut

JOINT APPENDIX *

*The presentence report has been added to the appendix without the approval of the U.S. Attorney - App. 31 etseq - and the Court has been requested to take judicial notice thereof. See brief pages 5-6.

TIMOTHY McNAMARA
ATTORNEY AT LAW
102 OAK STREET
HARTFORD, CONNECTICUT
06106

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

F. TIMOTHY McNAMARA
ATTORNEY AT LAW
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HARTFORD, CONNECTICUT
06106

PATRICK VINCENT REO,

Petitioner,

CIVIL ACTION NO. [illegible]-194

- against-

MAURICE H. SIGLER, Chairman United States Board of Parole, individually and in his capacity as a member of the National Appellate Board a/k/a National Directors of the United States Board of Parole,

Respondent.

- X

COMES NOW the petitioner Patrick V. Reo, appearing pro se herein and moves this court pursuant to the Administrative Proceedure Act, Title 5 U.S.C. 706(2)(hereinafter called A.P.A.) ; 28 U.S.C. 2201 and 28 U.S.C. 1391(e) for an immediate order directing the respondent Sigler to show cause before this court why a final order should not be entered granting the following relief:

a. Vacating and setting aside the decision of the National Appellate Board a/k/a National Directors of the Parole Board of Washington, D.C.,

b. Declaring the decision of the local Panel of the U.S. Board of Parole granting petitioner a parole date reinstated,

c. Declaring unconstitutional the provisions of Title 28 C.F.R. 2.24

and for such other further and different relief as this court deems just and fair in the premises.

That at all times hereinafter mentioned the United States Board of Parole is an "agency" within the meaning of A.P.A. 5 U.S.C. 551(1) et seq.. As such violations of the terms of the A.P.A. by the agency creates an independent source of jurisdiction allowing action in the District Courts, Pickus v. U.S. Board of Parole, 507 F.2d 1107, 1109-10.

That at all times hereinafter mentioned the National Appellate Board a/k/a National Directors of the U.S. Parole Board reside , sit and make rulings only in Washington, D.C..

That at all times hereinafter mentioned Maurice H. Sigler was the Director of the Parole Board and a permanent member of the National Directors a/k/a National Appellate Board who made the determination in the instant case in Washington, D.C..

That at all times hereinafter mentioned the Parole Boards Revised Rule, published September 5, 1975 as 28 C.F.R. 2.24 (hereinafter called Rule 2.24) is unconstitutional in violation of the due process clause of the U.S. Constitution.

That at all times hereinafter mentioned the U.S. Board of Parole "Guideline" classification of greatest severity violates not only due process but is a denial of "Equal Protection" and is unconstitutional.

The issue in this case involves a decision of the National Appellate Board a/k/a National Directors in Washington, D.C.. In considering the issues presented herein it will not be necessary to move the petitioner or to take his testimony as the underlying facts fully documented. Any additional facts required herein can be and historically have been supplied by affidavit.

No counsel consultations are necessary in the instant case as petitioner is proceeding pro se herein and in addition the action, files and the other parties to this lawsuit are all readily available in Washington, D.C., (Starnes v. McGuire, 512 F.2d 918) .

The District of Columbia is not only the most convenient forum but because the general agency policy under rule 2.24 is attacked as being contrary to A.P.A. 5 U.S.C. 706(2) etc., as well as due process, the District of Columbia is the only available forum. The reason for this is that the district of petitioner's incarceration (3rd Circuit) will not entertain suits against the Parole Board that rely on the A.P.A. as their source of jurisdiction, (Grant v. Hogan, 505 F.2d 1220: Zimmerman v. U.S., 422 F.2d326, 330; deVyver v. Warden, 388 F.Supp 1213).

FACTS

On the 3rd day of February, 1976 petitioner appeared before a local Panel of the Parole Board convened at the United States Penitentiary, Lewisburg, Penna..

That a full and complete hearing was then had before the Panel examiners at which the following facts were considered:

a. I had been incarcerated for almost 4 years of a twelve year regular adult sentence following a bargained for plea to a single count of conspiracy to obstruct inter-state commerce.

b. My past criminal record.

c. My pre-sentence report which clearly shows that my participation in this crime was that I

" assisted in the switching and disposal of stolen merchandise." Additionally, I was a late enterant into this conspiracy and came into the picture when " a new location for storage and switching of merchandise"was required, "the P&J Truck stop in Hoboken operated by the defendant Patrick V. Reo was secured and the ring continued operations for several more hijackings before all defendants were

arrested."

d. I had completed or exceeded all of my programs at the institution; was medium custody working outside the prison proper; was recomended for parole by the entire supervisory staff of the institution; had secured a verified offer of employment; would return to live with my wife in New Jersey and had an approved parole plan.

That in the light of the foregoing and after a frank examination of petitioner and the facts by the local Panel examiners they unanimously issued a tentative order granting me parole effective April 9,1976 (28 U.S.C. 2.21, 2.23) to my approved parole plan.

Thereafter, pursuant to rule 2.24 the Regional Director refered this matter to the National Directors a/k/a National Appellate Board for reconsideration (see Exhibit A).

While petitioner was notified of this referal, in the two line notice, there was absolutely nothing by way of factual allegations supplied by which he could acertain the reason or reasons underlying this decision of the Regional Director; nor was he apprised of the date of these proceedings or invited to appear either personally or through a representative or otherwise before the National Directors to present his side of the matter. In fact these entire proceedings following the local hearing were conducted in secret,ex-parte session which resulted in the following decision on March 1, 1976:

The local Panels tentative finding of eligibility for parole and actual release on April 9, 1976 became

" Continue for Institutional Review Hearing in December,1977." In truth this action requires petitioner to serve an additional 2 years in prison at which time he will receive another review hearing by another local Panel to see if he is again eligible for parole. The sole reason advanced for this action was :

> " Your offense behavior has been rated as greatest severity because you were involved in a large scale hijacking operation in which persons were kidnapped and in which one victum died." (Exhibit B)

ARGUMENT

That this "reason" as applied to petitioner is arbitrary and unreasonable; it flies in the face of the uncontroverted facts which clearly establish my participation in this crime; it punishes for what others , presently incarcerated actually did and pled to; it violates the basic concepts of fact finding and due process and is unconstitutional.

This "reconsideration" proceeding instituted by the Regional Director was under the authority of and pursuant to rule 2.24 . It is a de novo consideration of a prisoner's eligibility for parole based upon special reasons or findings of the Regional Director who also "votes" as a National Director considering the case.

While Morrissey and its progeny have applied due process standard to parole and prisoner hearings in general, this "reconsideration proceeding appears to be an issue of first impression regarding just what process is due to the concerned prisoner under this agency rule. In that regard, this court's attention is called to the "special offender" cases as providing the best yardstick as to the proper proceedure to be followed.

The agency action, to be constitutional must at least furnish:

1. Notice to the prisoner affected, informing him of the date, time and place of this proceeding; and

2. A statement of the reason or reasons including the factual findings of the Regional Director which have been submitted to the National Directors to induce their acting; and

3. A statement to the prisoner of his right and opportunity to appear personally, by representative or in writing to present facts in defense of this action; and

4. A record must be made and preserved of these proceedings so that a reviewing court will be able to discern the manner in which the administrative expertise was applied. see ex. Cardaropoli v. Norton, 523 F.2d 990; Catalano v. United States, 383 F.Supp 344; see also Grasso v. Norton, 529 F.2d 27; Childs v. Board of Parole, 511 F.2d 1270; U.S. ex rel Johnson v. Chairman, 500 F.2d 925.

That action of the National Board in the instant case was without full and proper notice, opportunity to appear, reasons from the Regional Director and no record whatever was made and preserved of these secret, ex-parte proceedings. In short, they were unconstitutional. A.P.A.5 U.S.C. 554(b)(c)(d); Morrissey v. Brewer, 408 U.S. 471; Wolf v. McDonald, 418 U.S. 539,555-56; Gagnon v. Scarpelli, 411 U.S. 778.

That in addition to the above, the final order of the National Board violates due process and is unconstitutional because:

a. Petitioner's plea in the instant case was to conspiracy arrived at as a result of a bargain between him and the government. The agreement binds the government, Santobello v. New York, 404 U.S. 257; S&E Contractors, Inc. v. U.S., 406 U.S. 1,10. The plea was to count 4 of the indictment, specifically to the obstruction of interstate commerce by conspiring to take articles moving therein.

Count 5 of the indictment charged a separate conspiracy which had as its purpose that the participants " knowingly and wilfully would transport in interstate commerce the drivers of such motortrucks who had been unlawfully seized, confined KIDNAPPED, carried away and held for that purpose."

This count was pled to by others presently incarcerated but was specifically dismissed as to petitioner, as was every other count of the indictment, (Exhibit C). Having bargained away the obligation to prove my guilt to any alleged substantive "kidnap" charge, the attempt to use this fact as a specific reason for

denial of parole violates not only the letter and spirit of " Santobello" but violates the entire plea process under Rule 11, Federal Rules of Criminal Proceedure. To permit the National Board to use dismissed substantive offenses in determining parole eligibility cause the entire plea process with the "knowing waiver of rights" at the time of the plea to be come a nullity, Bye v. U. ., 435 F.2d 177; Michel v. U.S., 507 F.2d 461; see also 84 Yale L.J. 810,880-82.

It is inconceivable that the National Board, an arm of the Department of Justice can violate with impunity a binding agreement made by the U.S. Attorney in the name of the United States of America.

b. The placing of petitioner in the greatest severity catagory because of this erroneous kidnapping reasoning creates yet another serious problem of constitutional proportions.

In adopting this general classification the Parole Board creates a special class of prisoners within a class. In every other guideline catagory from low to very high the prisoner is confronted by specific limitations of minimum and maximum times to be served before realistic parole consideration depending upon the points scored in the "Salient Factor Score" (see 28 C.F.R. 2.20). However, in the greatest severity class no provision whatever is provided for either salient factor or minimum/maximum confinement. In the greatest catagory there is no yardstick by which a person or a court can attempt, as is the case with every other class of prisoner, to show that a decision within or without the guidelines is arbitrary or reasonable. This simply means a basic denial of due process and equal protection.

Petitioner's role in this crime was that he assisted in the switching and disposal of stolen property. At best under the guidelines with a salient factor score of 8, he was in the "High" catagory, which indicates "Receiving Stolen Property" or "theft, Fogery, Fraud" and is thereby subject to 20 to 26 months imprisonment. At worst, he would be subject to classification in the "Very High" catagory under the general "Robbery(weapon or threat)" label which carries 36 to 45 months in prison.

In the instant case as a regular adult prisoner, at the one-third portion of his sentence petitioner has served almost 48 months of his sentence when he met the local Board in Lewisburg.

The local Panel examiners with full opportunity to consider all of the factors and relying on their day to day expertise in these matters, unanimously voted to parole me to an approved parole plan. Their decision in the instant case was correct and should be re-instated.

I have exhausted for all practical purposes all available administrative remedies without success.

If this court does not take immediate action herein petitioner will suffer and continue to suffer " grevious loss" by being forced

to remain in jail for an additional two years before even seeing another parole Panel.

That the action of the National Board initiated by and participated in by the Regional Director, was arbitrary and unreasonable in violation of law and the Constitution of the United States.

For all of the foregoing, petitioner respectfully prays that that the relief requested in the instant Rule be granted.

Dated : Lewisburg, PA. 17837
April 26, 1976

PATRICK V. REO
Petitioner pro se
P.O. Box 1000
Lewisburg, PA. 17837

Subscribed and Sworn to before me
this day of April, 1976

CERTIFICATION OF SERVICE

I hereby certify that on the day of April, 1976 I served a true copy of the within Petition upon:

Maurice H. Sigler
Chairman U.S. Parole Board
U.S. Board of Parole
Washington, D.C. 20537

by depositing the same in the appropriate mail facility for that purpose at the U.S. Penitentiary, Lewisburg, Penna..

PATRICK V. REO

Parole Form H-7a
(Rev. June 1974)

A

UNITED STATES DEPARTMENT OF JUSTICE
United States Board of Parole
Washington, D.C. 20537

FEB 20 1 03 PM '76

N 76-194

Notice of Action

76 0909

Name Patrick V. REO

Register Number 74385-158 *Institution* Lewisburg

In the case of the above-named, the Board has carefully examined all the information at its disposal and the following action with regard to parole, parole status, or mandatory release was ordered:

Your case has been referred to the National Directors ~~for reconsideration of panel's decision.~~

Conditions or remarks:

Reasons for denial, continuance or revocation: (Use separate sheet if necessary)

ENTERED

FEB

JAMES F. DAILEY, Clerk

Appeals procedure: You have a right to appeal a decision as shown below. Forms for that purpose may be obtained from your caseworker, and must be filed with the Chief, Classification and Parole, (or his equivalent) within thirty days of the date this Notice was sent.

A. Decision of a Hearing Examiner Panel. Appeal may be made to the Regional Director.

B. Decision of the National Appellate Board referred to it for reconsideration. Appeal may be made to the Regional Director.

C. Decision of the Regional Director. Appeal may be made to the National Appellate Board.

D. Decision of Regional Directors in cases where they assumed original jurisdiction. Appeal may be made to the National Appellate Board.

February 19, 1976
(Date Notice sent)

Northeast
(Region - Specify)

gds
(Docket Clerk)

National Appellate Board
(Check)

INMATE COPY

(Rev. June 1974)

B

UNITED STATES DEPARTMENT OF JUSTICE
United States Board of Parole
Washington, D.C. 20537

MAR 3 11 04 AM '76

JAMES F. DAVEY, Clerk

Notice of Action

Name Patrick V. Reo

Register Number 74385-158 *Institution* Lewisburg

In the case of the above-named, the Board has carefully examined all the information at its disposal and the following action with regard to parole, parole status, or mandatory release was ordered:

76- 0909

Continue for Institutional Review Hearing in December 1977.

Conditions or remarks: N 76-194

Reasons for denial, continuance or revocation: (Use separate sheet if necessary)

Your offense behavior has been rated as greatest severity because you were involved in a large scale hijacking operation in which persons were kidnapped and in which one victim died. You have a salient factor score of 8. You have been in custody a total of 47 months. Guidelines established by the Board for adult cases which consider the above factors indicate a range of more than 45 months to be served before release for cases with good institutional program performance and adjustment. Board guidelines for greatest severity cases do not specify a maximum limit. Therefore, the decision in your case has been based in part upon a comparison of the relative severity of your offense behavior with offense behavior examples listed in the very high severity category.

Appeals procedure: You have a right to appeal a decision as shown below. Forms for that purpose may be obtained from your caseworker, and must be filed with the Chief, Classification and Parole, (or his equivalent) within thirty days of the date this Notice was sent.

A. Decision of a Hearing Examiner Panel. Appeal may be made to the Regional Director.

B. Decision of the National Appellate Board referred to it for reconsideration. Appeal may be made to the Regional Director.

C. Decision of the Regional Director. Appeal may be made to the National Appellate Board.

D. Decision of Regional Directors in cases where they assumed original jurisdiction. Appeal may be made to the National Appellate Board.

March 1, 1976
(Date Notice sent)

(Region - Specify)

NFB
(Docket Clerk)

National Appellate Board XXX
(Check)

INMATE COPY

DISTRICT OF NEW JERSEY

U. S. DISTRICT COURT
NEWARK, N.J.
74385-158

United States of America

v.

PATRICK VINCENT REO

No. Criminal 750-71

76 0909

On this 26th day of May, 1972 came the attorney for the government and the defendant appeared in person and[1] by Maurice Krivit, counsel

IT IS ADJUDGED that the defendant upon his plea of[2] guilty, and the court being satisfied there is a factual basis for the plea has been convicted of the offense of obstructing, delaying and affecting interstate commerce by robbery of goods from interstate shipment

JAMES F. DALEY, Clerk

as charged[3] in Count 4

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] twelve (12) years.

IT IS ADJUDGED that[5] Counts 1 thru 3, 5 thru 51 be and are hereby dismissed.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ FREDERICK B. LACEY
United States District Judge.

The Court recommends commitment to[6]

Clerk.

A True Copy. Certified this ____ day of ____ 1972

(signed) ANGELO W. LOCASCIO
Clerk. (By) Elizabeth M. Seltsam
Deputy Clerk

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

PATRICK VINCENT REO,

Petitioner,

v.

MAURICE H. SIGLER, Chairman, United States Parole Board,

Respondent.

CIVIL NO. N-76-194

ORDER TO SHOW CAUSE WHY A WRIT OF HABEAS CORPUS SHOULD NOT ISSUE

Upon the verified petition of petitioner, Patrick Vincent Reo, for issuance of a writ of habeas corpus, it is

ORDERED, that the respondent herein show cause on or before July 14, 1976, why a writ of habeas corpus should not issue herein as prayed for in said petition by filing a return certifying the true cause of the detention of the petitioner; and it is further

ORDERED, that the petitioner be retained in custody within this district pending a decision of petitioner's case before this Court, or until petitioner is granted a furlough, released on parole or transferred to a Halfway House; and it is further

ORDERED, that service by the United States Marshal of the Order to Show Cause, together with a copy of the verified petition, on the respondent Maurice H. Sigler, on or before June 29, 1976, be deemed sufficient service.

Dated at New Haven, Connecticut, this 18th day of June, 1976.

Robert C. Zampano
United States District Judge

FILED

JUN 24 10 44 AM '76

DISTRICT COURT
NEW HAVEN, CONN.

(1)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[illegible],

Petitioner,

Civil Action No. H-76-197

-against-

AMENDMENT

[illegible], Chairman,
UNITED STATES BOARD OF [illegible], ET AL.,

Respondent.

[illegible], petitioner in the above styled cause of action (enumerated as Civil 76-0000 in the District Court for the District of Columbia prior to transfer to this district) moves to amend his original petition and complaint pursuant to Rule 15, F. R. Civ. P., (28 U. S. C.), as follows:

1. Jurisdiction in the original application herein was posited in 5 U.S.C., § 706(2); 28 U.S.C., § 2201 and 1391(e), seeking an Order to require respondent-Sigler to show cause why a final order ought not be granted providing petitioner the relief sought.

2. The instant amendment comes about due to the fact that petitioner is seeking his release where he claims the actions of respondent are unlawful and that therefore he is entitled to his immediate release on parole. Because petitioner is in fact challenging the legality of his restraint he now moves to include an application for habeas corpus relief, 28 U.S.C., § 2241, et seql., and respectfully requests that his cause be heard promptly within the requirements of the habeas remedy. He says further that because of the respondent's applications for transfer of his cause relief has been forstalled for an inordinate period of time, during which he has been caused to languish in prison awaiting determination of his claims and that other than habeas corpus no other remedy is available to him other than to seek issuance of a writ of mandamus; which, under contemporary standards, would be unlikely, Kerr vs. District Court for the Northern District of California, ____ U.S. ____(1975).

//

ATTORNEY AT LAW
102 OAK STREET
HARTFORD, CONNECTICUT
06106

3. Omitted in the original petition and complaint herein was the fact that petitioner-Lee was sentenced on [illegible] 1971, as may be seen from the Judgment and Commitment annexed to the original petition. The guidelines currently implemented by the Board of Parole, and utilized as an ostensible reason for denying petitioner parole were not legally promulgated,(see: Pickus vs. Bd. of Parole, ___F2d___(C.A.D.C. 1971), until November 1973, when they were adopted as "emergency regulations. Those guidelines were not utilized in the Northeast Region, i.e., Lewisburg & Danbury, until the aforesaid date. Accordingly, petitioner says now that the utilization of the guidelines in the instant case is in violation of the ex post facto clause to the United States Constitution; and, it is well settled, that ex post facto prohibitions a ply FULLY to agency proceedings, [illegible]; Love vs. Fitzharris, 460 F.2d 382 (C.A. 9 1972); Jarden vs. Herrero, 411 U.S. 654, 663; 41 L.Ed'd 363, 94 S.Ct. 2532(1974); see also: Art. 1, § 9, Cl. 3, U.S. Constitution. In consideration of the foregoing petitioner believes and says that the proceeding purporting to be a parole hearing held at the Federal Penitentiary, Lewisburg, Peniyentiary on February 3, 1976, was illegal and, that at the least, he is entitled to be heard anew without reliance by the examiners on their guidelines. That because this cause is brought pursuant to habeas standards these proceedings ought to be expedited as law and justice require.

[illegible] petitioner respectfully requests that the instant amendment be made a part of these proceedings and for such other, further and different relief as to the Court may appear to be just and appropriate.

DANBURY, CONNECTICUT
June 23, 1976

Respectfully submitted,

[illegible],
Petitioner.

PROOF OF SERVICE

A true and correct copy of the foregoing motion to amend has been mailed to the United States Attorney for the District of Connecticut, New Haven, Connecticut, this ___day of June, 1976.

[illegible]

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

PATRICK VINCENT REO :

v. : CIVIL NO. N-76-194

MAURICE H. SIGLER, Chairman, U.S. Board of Parole, et al :

RESPONSE TO ORDER TO SHOW CAUSE

Now comes Maurice H. Sigler, Chairman, United States Parole Board, respondent herein, by and through his counsel, Peter C. Dorsey, United States Attorney for the District of Connecticut, and Raymond L. Sweigart, Assistant United States Attorney, and in response to this Court's Order to Show Cause Why a Writ of Habeas Corpus Should Not Issue herein states as follows:

1. The petitioner, Patrick Vincent Reo, is a federal prisoner lawfully confined to the custody of the United States Attorney General pursuant to a sentence of twelve (12) years imprisonment imposed on May 26, 1972 by the United States District Court for the District of New Jersey upon petitioner's plea of guilty to one count of a fifty-one count indictment charging him with obstructing, delaying and effecting interstate commerce by robbery of goods from interstate shipment.

2. The petitioner is presently incarcerated pursuant to said commitment and sentence at the Federal Correctional Institution, Danbury, Connecticut within the jurisdiction of this Court.

3. On February 3, 1976, petitioner was afforded an initial parole hearing at the United States Penitentiary, Lewisburg, Pennsylvania, where he was then confined.

4. The hearing panel tentatively recommended that petitioner be admitted to parole effective April 9, 1976.

5. By Notice of Action dated February 19, 1976, petitioner was informed by the Regional Director of the Northeast Region that his case had been referred to the National Directors of the Board of Parole for further consideration of the panel's recommendation pursuant to 28 C.F.R. §2.24.

6. By Notice of Action dated March 1, 1976, petitioner was informed by the National Directors that he would be continued for an institutional review hearing in December of 1977.

7. Said Notice of Action given petitioner contained written reasons for denial of parole which are more than sufficient to support said denial and clearly indicate that there has been no abuse of discretion on the part of respondent in maintaining petitioner in custody.

8. Petitioner has exhausted his administrative remedies as to this denial of parole.

9. At most the Administrative Procedures Act, 5 U.S.C. §706(2), as relied upon by petitioner, gives this Court jurisdiction to review the promulgation of regulations by respondent, but provides no jurisdiction to review individual parole determinations thereunder.

10. The regulation complained of, 28 C.F.R. §2.24 was properly promulgated in accordance with the provisions of the Administrative Procedures Act.

11. The procedures established by 28 C.F.R. §2.24 are constitutional and do not violate due process.

12. In response to petitioner's Amendment alleging habeas corpus jurisdiction under 28 U.S.C. §2241, et seq. received after this Court's Order to Show Cause, respondent states that denial of parole to petitioner was within the discretion of respondent and was not an abuse thereof, was based upon sufficient reason and fact, and further did not violate any provision of law, regulation or the constitution.

13. In support of these allegations the affidavit of James C. Rogers, Parole Commission Pre-Release Analyst is attached hereto and made a part hereof.

14. Respondent further states that this petition presents no issues of fact and he is entitled to judgment on the law.

WHEREFORE, respondent requests that the Writ not issue, that judgment be granted respondent and the petition be dismissed.

PETER C. DORSEY
UNITED STATES ATTORNEY

BY: _____
RAYMOND L. SWEIGART
ASSISTANT UNITED STATES ATTORNEY

A F F I D A V I T

I, James C. Rogers, duly sworn on oath, depose and state as follows:

I am the Pre Release Analyst for the United States Parole Commission, Northeast Regional Office, with offices at Scott Plaza II, Industrial Highway and Tinicum Township, Philadelphia, Pennsylvania 19113.

I have examined the file of Patrick V. Reo, Register Number 74385-158 and find as follows:

On May 26, 1972, Mr. Reo was sentenced in the United States District Court for the District of New Jersey to 12 years for the offense of Obstructing, Delaying, and Affecting Interstate Commerce by Robbery of goods from Interstate Shipment. He was given credit for 58 days previously confined.

Mr. Reo received his initial hearing on February 3, 1976 at the U.S. Penitentiary, Lewisburg, Pennsylvania. The hearing examiner panel tentatively recommended parole effective April 9, 1976. By Notice of Action dated February 19, 1976, Mr. Reo was informed by the Commissioner of the Northeast Region that his case had been referred to the National Directors for reconsideration of the panel's decision, pursuant to 28 C.F.R. Section 2.24.

By Notice of Action dated March 1, 1976, Mr. Reo was notified by the National Directors that he had been continued for an institutional review hearing in December, 1977. Reasons for parole denial were listed as follows:

> Your offense behavior has been rated as greatest severity because you were involved in a large scale hijacking operation in which persons were kidnapped and in which one victim died. You have a salient factor score of 8. You have been in custody a total of 47 months. Guidelines established by the Board for adult cases which consider the above factors indicate a range of more than 45 months to be served before release for cases with good institutional program performance and adjustment. Board guidelines for greatest severity cases do not specify a maximum limit. Therefore, the decision in your case has been based in part upon a comparison of the relative severity of your offense behavior with offense behavior examples listed in the very high severity category.

A F F I D A V I T

On March 12, 1976, Mr. Reo appealed the decision of the National Directors pursuant to 28 C.F.R. Section 2.25. The Regional Commissioner, by Notice dated March 24, 1976, notified him that the order dated March 1, 1976 was affirmed and the reasons given supported the order. Also, no other information submitted for requested review was deemed significant enough to affect the decision. On April 23, 1976, Mr. Reo appealed the decision of the Regional Commissioner pursuant to 28 C.F.R. Section 2.26. The National Appeals Board by notice dated June 8, 1976, notified him of affirmation of the previous decision and the reasons given support the decision.

The offense behavior rating of greatest severity as listed on the Notice of Action dated March 1, 1976, reflects the Commission's assessment of the actual circumstances of the crime committed by Mr. Reo. This rating was based on the information contained in the Presentence Report dated May 16, 1972, which stated this case involved a 51 count indictment and ten codefendants. Mr. Reo was charged with all 51 counts but pled guilty to only count 4. The Presentence report stated count 4 involved Mr. Reo renting a garage to a hijacking group and later participating in the group's activities by assisting in the switch and disposal of stolen merchandise. The group's operation consisted of holding drivers of stolen vehicles against their will (kidnapping) while the goods were transferred. The drivers were then released. One driver being held was killed when he suffocated as a result of being locked in a car trunk.

The reasons stated for the severity rating in Mr. Reo's case were based on the nature of his offense and involvement with the hijacking ring as set forth in the Presentence report.

JAMES C. ROGERS
Pre Release Analyst

Subscribed and sworn to before
me this 30 day of June, 1976

Eva M. Paso

EVA M. PASO, Notary Public
Tinicum Twp., Delaware Co., Pa.
My Commission Expires October 2, 1978

JUN 8 1977

FILED

AUG 17 8 17 AM '76

U.S. DIST. COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

PATRICK VINCENT REO, Civil Action No. N-76-194.

Petitioner,

REPLICATION

Vs.

MAURICE H. SIGLER, Chairman,
U.S. BOARD OF PAROLE, et al.,

Respondent(s).

IN ANSWER TO respondents' response to the Show Cause Order of this Court, petitioner, says:

1. That by motion filed during early March 1976, petitioner sought relief from the actions of the respondents, wherein he claimed, inter alia, that 28 C.F.R., § 2.24, was unconstitutional and unlawful otherwise for the reasons set forth in his original moving papers. Jurisdiction was based on 28 U.S.C., § 2201; and 5 U.S.C., § 706(2). Venue was posited in pursuance with 28 U.S.C., § 1391(e).[1]

2. Thereafter respondents moved pursuant to 28 U.S.C., § 1404(a), to transfer the cause from the District of Columbia to the Middle District of Pennsylvania, on the ostensible claim of convenience , where petitioner was then confined in the federal prison at Lewisburg. Notwithstanding the holding in Starnes vs. McGuire, 512 F2d 918 (D.C. Cir. 1974), petitioner declined any opposition to said transfer application, where he sought to forestall all possible delay in the determination of his claims; although, the Law of the Forum, (Third Circuit), had arbitrarily held that suits brought against the Board of Parole, and predicated on 5 U.S.C., the Administrative Procedure Act would not be entertained in that locus, and that it was obvious that respondents were

[1] Because this case was originally brought in the District of Columbia, and transferef, on motion of respondents, to the Middle District of Pennsylvania, and when petitioner was thereafter transferred to FCI-Danbury, again transferred, on petitioner's motion, to the District of Connecticut, it is felt that a recapitulation is requisite, In the interests of judicial economies, however, the instant answer to respondents' oppositional response and memorandum in support thereof will be limited to its shortest possible form.

fact and indeed "forum shopping," See, Grant vs. Hogan, 505 F2d 1220 (3rd Cir. 1974); Zimmerman vs. United States, 422 F2d 326,330 (3rd Cir. 1970); de Vyver vs. Warden, 388 F. Supp. 1213 (M.D. Pa. 1974); Kinnison vs. Board of Parole, 407 F. Supp. 367, 369 (M.D. Pa. 1976); but contrast and compare: Childs vs. Board of Parole, 511 F2d 1270, 1274 and see also p. 1278, id. (D.C. Cir. 1974); Pickus vs. Board of Parole, 507 F2d 1107, 1111-12 (D.C. Cir. 1974); Cf., Hurley vs. Reed, 288 F2d 844, 846 (D.C. Cir. 1961); and that the cases relied upon by respondents emenating from the Third Circuit were, in the premises, bad law and in direct conflict with the other Circuits having reached the issue. Moreover, respondents have conceded that the parole board IS AN AGENCY WITHIN THE PURVIEW OF THE ADMINISTRATIVE PROCEDURE ACT, see Fed. Reg. Vol. 40, No. 173, Sept. 5, 1975, at p. 41328, and see also, United States vs. Moretti, Inc., 478 F2d 418 at p. 425 (5th Cir. 1973); Tedder vs. Board of Parole, 527 F2d 593, 594 (9th Cir. 1975). Therefore respondents' contentions that their actions and decisions are immune from judicial review are frivolous and unworthy of consideration by this Court. In any event petitioner is now confined in the Federal Correctional Institution, Danbury, Connecticut, the instant cause of action has been transferred to this district on petitioner's motion and thus is presently properly before this Court and ripe for determination.

3. Prior to the filing of any responsive pleadings by respondents, petitioner, in pursuance with Rule 15, Federal Rules of Civil Procedure (28 U.S.C.), filed an Amendment to his original motion. Respondents, seemingly unaware of the provisions of Rule 18 of that Title, relating to joinder of claims and remedies, would now appear to believe, (or to infer as much to this Court), that by amending his original motion to include the claim that his present restraint is illegal, and in violation of the Constitution and laws of the United States, (28 U.S.C., § 2241 et seqq.), petitioner has somehow abandoned his other herein advanced complaints.

In their oppositional response, respondents rely upon various case law, e.g., de Vyver, supra, Kinnison vs. Board of Parole, supra, McGee vs. Aaron

523 F2d 825 (7th Cir. 1975); and Hyser vs. Reed, 318 F2d 225 (D.C. Cir. 1963) (en banc),[2] and each authority relied upon by respondents has been either overruled, is inapposite to petitioner's claims or highly supportive of them. Certainly, none of the cases cited by respondents can obtain to exsanguinate petitioner's claims, Brown vs. Lundgren, 528 F2d 1050, 1054 - footnotes 3,4, and 5 (5th Cir. 1976).

a. Kinnison, supra, follows de Vyver, supra, without saying as much, and erroneously holds that the Administrative Procedure Act does not apply to parole board proceedings, 407 F. Supp. at p. 369, but see and cf., Fed. Reg. Vol. 40, No. 173, September 5, 1975, at p. 41328, supra, at Item #2; and Moretti, Inc. supra, 478 F2d at p. 425.

b. McGee vs. Aaron, supra, is far distinguished from the matter sub judice and is, in fact, strongly supportive of petitioner's claims. As noted by respondents' learned counsel: "A further hearing by the Parole Board ... would not produce benefits***", ibid., 523 F2d at p. 827, and it is, precisely, for this reason that petitioner amended his motion to include habeas jurisdiction. Further, McGee, id., mistakenly relied upon by respondents is a case wherein the Board, respondents herein, DID PROVIDE REASONS other than guidelines and offensive severity for denial of parole, id., at p. 826. The broadest reading of that case may only serve to demonstrate it is fully inapposite on both facts and law to the case at bar.

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[2] Hyser vs. Reed, supra, concerned itself with parole revocations. Moreover it is now WELL settled that abuses of discretion and/or other arbitrary, capricious or otherwise unlawful actions on the part of the parole agency are cognizable as justicable issues. (See, Eg., Lupo vs. Norton, 371 F. Supp. 156, 160 (D. Conn. 1974); Scarpa vs. Board of Parole, 477 F2d 278, 283 (5th Cir. 1973) rev'd on other grounds 414 U.S. 809 (1974); United States vs. Powell, 487 F2d 325 (4th 1973); United States vs. Malcolm, 432 F2d 809, 816 (2nd Cir. 1970); Bradford vs. Weinstein, ___F2d___ (4th Cir. 1974); cf. Tucker vs. United States, 1972, 404 U.S. 443)

4. Because petitioner was sentenced during 1972, he claimed, by Amendment herein, that to deny him parole, or to apply guidelines which would or could negatively affect him or serve to disadvantage him, by causing him to serve time in addition to that prescribed by the laws which prevailed at the time his sentence was imposed, (18 U.S.C., §§ 4202, 4203), was a flagrant violation of the Ex Post Facto Clause of the United States Constitution: Art. I, § 9 Cl. 3. It is settled that ex post facto prohibitions apply fully to agency proceedings; ACCORD: Love vs. Fitzharris, 460 F2d 382 (9th Cir. 1972); United States ex rel Hardeman vs. Wells, 479 F. Supp. 1087 (D. Mass. 1974); Warden vs. Marrer 417 U.S. 653, 663, 41 L.Ed2d 383, 94 S.Ct. 2532(1974) (and cases cited therein)

This issue, a purely legal question, was well pleaded in petitioner's Rule 15 Amendment, and stated facts petitioner alleges ought to entitle him to the relief sought. Respondent, through neglect or design, in their oppositional pleadings carefully reframed the issues and met petitioner's ex post facto claims by completely omitting any reference to the same, and improperly moving for dismissal. Because of respondents' failure to answer petitioner's ex post facto claim, their motion to dismiss, much like the demurrer of bygone days, must rest on the proposition that if everything adequately pleaded as fact in the complaint is taken as true, (as uncontroverted allegations which if proved must be in habeas proceedings), no cause for dismissal has been set out by respondents, and on the basis of the obvious existance of the ex post facto issue in the instant cause, petitioner believes and therefore says the Court ought to hear and determine the issue, pursuant to 28 U.S.C., §§ 2201 and 2241 et seqq., and that he is entitled to judgment on the pleadings and the writ should issue as law and justice direct. If petitioner's rights, as ennunciated through Art. I, § 9, Cl. 3, U.S. Cons't., have been violated, and petitioner respectfully urges that they have been, he has been caused to serve in excess of one (1) year in prison unlawfully and is threatened with serving an additional eighteen (18) months under the same ex post facto violation, where there is no adequate

remedy in law to redress him for the same.

5. Respondents' opposition is purportedly buttressed by an affidavit of James C. Rogers, Pre Release Analyst [sic], U.S. Board of Parole, (a copy of the afore-referenced document is annexed to respondents' response to the Court's Order to Show Cause herein); however:

> " ... since the board did not provide these reasons to the [petitioner] after denying his parole, the court will not allow someone later to hypothesize reasons for the decision after the fact." (Robinson vs. Board of Parole, W.D. N.Y. 1975, 403 F. Supp. 638 at p. 640. (Opinion of CURTIN; C.J.) (emphasis added)

* * *

Petitioner's case, on facts, would appear to be anologous to Grattan vs. Sigler, 525 F2d 329(9th Cir. 1975), where petitioner here, like Grattan, was not given advance notice that he would be designated as a "greatest severity category" case. Under the specific facts of petitioner's involvement, where the presentence/probation report and classification material material describes him as a "late entrant" and peripheral actor in the over-all conspiracy charged and where, according to the law of his case, his participation was limited to renting a garage and assisting in the "switching of merchandise," stolen from interstate shipments, had he been provided with notice he would have obtained the assistance of counsel, and prepared to present evidence to challenge his being placed in the greatest severity category. Nothing in petitioner's presentence report reflects that he was a "ringleader" or principal actor in the conspiracy charged at Ind. #750-71,(D. N.J.), and, in any event, greatest severity designations are generally reserved to crimes such as "skyjacking and wilful homicide,"Grattan, ibid., at p. 330, fn. 2, see also 28 C.F.R., § 2.20. Petitioner, by respondents' failure to afford him reasonable notice and, therefore, a meaningful opportunity to be heard, was effectively denied an opportunity to challence the complained of, esculated designation, and, accordingly, due process of law, 28 C.F.R., § 2.13(d); Lupo vs. Norton, 371 F. Supp. 156 at pp. 160-161 (D.Conn. 1974); Grattan, supra, 525 F2d at p. 331, and see the memorandum of Mr. Joseph Nardoza, Northeast Regional Director, United States Board of Parole,

received by the National Appellate Board on February 23, 1976.

6. As aforesaid, petitioner a late-entrant and peripheral member of the conspiracy charged at Crim. #750-71 (D. N.J.), received a custodial term of twelve (12) years' to serve. The prime-movers or principals: Harrison, French and Piccone, were sentenced to two 15-years' sentences to operate "concurrently", respectively, and Piccone, also a principal received a sentence of ten (10) years' under adult provisions. The Notice of Action annexed to petitioner's original motion, and dated: March 1, 1976, is ambiguous on its face. First the respondents contend there are no specific guidelines for greatest severity cases, but, in the instant matter, said Notice of Action reads, in pertinent part:

> " ... you have been in custody a total of 47 months. Guidelines established by the Board for adult cases which consider the above factors indicate a range of more than 45 months to be served before release for cases with good institutional performance and adjustment. Board guidelines do not specify a maximum limit.

Thus the question arises whether ***vel non*** there are guidelines for greatest severity cases? Notwithstanding the post hoc submissions of respondents, the self-serving declarations of the Rogers' affidavit, petitioner has, even date, served sixty-two (62) months in prison. Apparently respondents relied upon inflamatory and prejudicial information unknown to petitioner prior to his "hearing" before respondents' examiners; which informationwas later used at the Regional level to refer his case to the National Directors. He says now that said information was erroneous and inaccurate, that he was denied an opportunity to challenge the same, and that as a result of the foregoing he was placed in a wrong category and, therefore, punished more severely than many of the principal actors in the conspiracy, since he is one of the four (4) participants in the offenses who remain incarcerated, and where the remaining three as stated heretofore herein were admittedly the prime-movers in the over-all, continuing series of crimes.[3]

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[3] See: Amended 28 C.F.R. 2.20, Fed. Reg., Vol. 41, No. 93, 5-12-76, at p. 19341. Range of months to be served for inmates with "good parole risk prognosis, (petitioner has 8-points), 48 months under Very High Severity Category. As aforesaid petitioner has already served a period of 62-months in prison.

7. Petitioner submits now, that where, "... the Board has made clear that it had de-emphasized rehabilatative factors as a condition of release [on parole]", (Fed. Reg., Vol. 40, No. 173, September 5, 1975, p. 41329), they are admittedly operating on the basis of a statician's theory, which cannot predict the proper nor optimum time when a prisoner ought to be released. Therefore, where, as in the instant case, the Board rejected the over-all recommendations of the prison classification team and staff, ignored their collective expertise in favor of continued punitive restraint, where no reasons other than "severity category" and, ostensible claims, of "comparison of relative severity of your offense behavior with offense behavior examples listed in the very high severity category," without addressing themselves to the requirements of prevailing law, i.e., 12 U.S.C., § 4203: that petitioner would not refrain from further anti-social behavior and that his release would therefore be incompatible with public interest, there actions in denying parole to petitioner was manifestly arbitrary, and ought not be condoned.

For all of the foregoing reasons, and for those reasons set forth in petitioner's original motion and amendment thereto, petitioner respectfully requests this Honorable Court to grant the relief requested and to declare 28 C.F.R., § 2.24 unconstitutional; and, that the respondent may not apply their guidelines in his case, where such application is ex post facto and, therefore, constitutionally impermissable, and that ORDERS issue requiring respondents to reopen his case and rehear his application for parole under contemporary standards of Due Process, at the least, and that upon respondents' refusal to so act that a writ of habeas corpus issue as prayed for and for such other, further and different relief as to this Court may appear appropriate and just.[4]

/s/
Patrick Vincent Reo,
Petitioner.

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[4] Because of the gross inadequacy of the institution law library and due to the fact the Legal Services Organization of the Yale Law School are presently over-taxed, and were unavailable to petitioner, he requests the Court take Judicial Notice that this is a pro se submission, Johnson vs. Avery, 393 U.S. 483 (1969); and that accordingly petitioner's cause of action ought to be liberally construed as prescribed by the Supreme Court in Haines vs. Kerner, 404 U.S. 519, 520-521 (1972).

PROOF OF SERVICE

A true and correct copy of the foregoing and annexed Replication, has been mailed to the respondents' attorney, the United States Attorney for the District of Connecticut, USPO & Courthouse, New Haven, Connecticut, postage prepaid, this _____ day of August 1976.

Patrick Vincent Reo

Pembroke Station
Danbury, Connecticut 06810

Petitioner, pro se.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

PATRICK VINCENT RILO, :

Petitioner. :

v. : CIVIL NO. N-76-194

PAUL[illegible] H. SIGLER, Chairman, United States Parole Board, :

Respondent. :

MEMORANDUM OF DECISION

Petitioner, presently incarcerated at the Federal Correctional Institution, Danbury, seeks habeas relief from the decision of respondent denying him parole. Jurisdiction is predicated upon 28 U.S.C. § 2241. He contends that (1) the procedure prescribed by 28 C.F.R. § 2.24,[1/] by which the National Directors reversed the hearing examiners' favorable determination is unconstitutional; (2) the reasons given him for denial of parole were insufficient; and (3) placing his offense in the category of "greatest severity" under the parole guidelines, 28 C.F.R. § 2.20, deprives him of equal protection of laws.

1/ 28 C.F.R. § 2.24 (September 5, 1975), states in part,

> "A Regional Director may review the decision of any examiner panel and refer this decision, prior to written notification to the prisoner, with his recommendation and vote to the National Directors for reconsideration and any action deemed appropriate."

The moving papers reveal that on May 26, 1972, petitioner was sentenced to imprisonment for a period of 12 years by the District Court for the District of New Jersey, following a plea of guilty to obstructing interstate commerce by robbery of goods from interstate shipment.[2/] On February 3, 1976, he received an initial parole hearing before two hearing examiners of the Parole Board. They tentatively recommended that petitioner be admitted to parole, effective April 9, 1976. See 28 C.F.R. § 2.23. However, on February 19, 1976, petitioner received a Notice of Action informing him that his case had been referred to the National Directors for further consideration of the hearing examiners' recommendation pursuant to 28 C.F.R. § 2.24.

On March 1, 1976, petitioner received a Notice of Action from the National Directors which overturned the hearing examiners' recommendation and ordered petitioner's case continued for an institutional review hearing in December 1977. The reasons for this decision were as follows:

> "Your offense behavior has been rated as greatest severity because you were involved in a large scale hijacking operation in which persons were kidnapped and in which one victim died. You have a salient factor score of 8. You have been in custody a total of 47 months. Guidelines established by the Board for adult cases which consider the above factors indicate a range of more than 45 months to be served before release for cases with good institutional program performance and adjustment."

2/ At the time of sentencing, the remaining 50 counts of a 51-count indictment were dismissed.

For the following reasons, the Court finds that the procedures employed by the Board were proper and the decision reached was within its discretion; and therefore, denies petitioner's request for habeas relief.

First, the procedure set forth in 28 C.F.R. § 2.24 does not violate petitioner's right to due process. He was given a hearing before two hearing examiners and written reasons for the denial of parole after the hearing. See McGee v. Aaron, 523 F.2d 625 (7 Cir. 1975); cf. United States ex rel. Johnson v. Chairman, N.Y. State Board of Parole, 500 F.2d 925 (2 Cir.), vacated as moot sub. nom. Regan v. Johnson, 419 U.S. 1015 (1974). A rehearing before the National Directors is not required. Cf. Crasso v. Norton, 520 F.2d 27 (7 Cir. 1975). Prisoners who feel that the reasons for denial are false or arbitrary may have them reviewed in a habeas corpus proceeding. McGee v. Aaron, supra at 627.

Section 2.24 ensures that the tentative decisions of parole examiners can be reviewed and reconsidered at the highest level in the parole process. The substantive standards for parole release remain the same; only the decision-making body differs. See Biancone v. Norton, Civil No. B-74-473 (D. Conn. November 18, 1975). The inmate is informed that the hearing examiners' decision is tentative until reviewed and approved by the Regional Director, at which time the inmate receives a written Notice of Action. Therefore, a reconsideration of this decision by higher officials before it becomes final does not deprive the inmate of a "liberty interest" or constitute a "grievous loss" requiring greater due process safeguards. Cf. Morrissey v.

Brewer, 406 U.S. 471 (1972); Metz v. Norton, Civil No. B-74-89 (D. Conn. April 30, 1976); Williams v. United States Board of Parole, 383 F. Supp. 402 (D. Conn. 1974).

Second, the reasons given by the National Directors were sufficient to warrant petitioner's continued incarceration. Petitioner pled guilty to one count of a 51-count indictment. The Board's regulations specify that "aggravating circumstances," such as might be involved in a prisoner's alleged offense, can be considered in parole decision-making. See 28 C.F.R. § 2.20(d)(1975); Manos v. United States Bd. of Parole, 399 F. Supp. 1103 (M.D. Pa. 1975); Lupo v. Norton, 371 F. Supp. 156 (D. Conn. 1974). Most recently, the Second Circuit reinforced this approach by holding that the Parole Board may concern itself with all facets of a prisoner's character, make-up and behavior including the presentence report. Not only can the Board use this information in giving an offense severity rating but it may use it for such other purposes as it finds necessary and proper. Billiteri v. United States Board of Parole, _____ F.2d _____ (2 Cir. August 30, 1976), slip op. at 5295.

In the instant case, the Board informed petitioner that his "greatest severity" rating was based on consideration of his alleged offense. 3/ See Lupo v. Norton, supra. The

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3/ The offenses which petitioner was alleged to have committed involved the holding of drivers of stolen vehicles against their will and the death by suffocation of one driver who was locked in a car trunk. See Affidavit of James C. Rogers, Pre-Release Analyst for the United States Parole Commission. Parole guidelines indicate that kidnapping is an offense in the "Greatest Severity" category.

petitioner makes no claim that his alleged offense was other than what the Board relied on; and therefore, the Board's classification of his offense is proper.

Third, petitioner contends that placement in the "greatest severity" category deprives him of equal protection of laws because, unlike other categories in the guideline table "Greatest Severity" has no specific ranges of time to be served before release in relation to the salient factor score. Since it is now settled that the use of parole decision-making guidelines is "within the discretion vested in the Board by Congress', Battle v. Norton, 365 F. Supp. 925, 931 (D. Conn. 1973), the claim is without merit. Cf. Brest v. Ciccone, 371 F.2d 981, 982-983 (8 Cir. 1967); Kinnison v. U.S. Bd. of Parole, 407 F. Supp. 367, 368 W.D. Pa. 1976).

Accordingly, the petitioner's request for habeas relief is denied; the petition is dismissed.

Dated at New Haven, Connecticut, this 3rd day of September, 1976.

Robert C. Zampano
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

PATRICK VINCENT REO :
:
v. : CIVIL NO. N 76-194
:
MAURICE H. SIGLER, Chairman, :
United States Parole Board :

JUDGMENT

This cause came on for consideration on a petition seeking habeas relief from a decision denying parole, and the Court having duly considered the issues, filed its Memorandum of Decision thereon, denying the said relief and dismissing the petition,

It is accordingly ORDERED and ADJUDGED that judgment be and is hereby entered, dismissing the petition for habeas relief.

Dated at New Haven, Connecticut, this 22nd day of September, 1976.

SYLVESTER A. MARKOWSKI
Clerk, United States District Court

BY Francis J. Lavigne
Deputy-in-Charge

(12)

PROBATION FORM 2a
FEB 65

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

PRESENTENCE REPORT

NAME: REO, Patrick Vincent

ADDRESS: 101 74th Street-Apt. 2
North Bergen, New Jersey
(With Wife)

LEGAL RESIDENCE: Same

AGE: 25 DATE OF BIRTH: 12-26-46

SEX: Male RACE: Caucasian

CITIZENSHIP: United States

EDUCATION: 9th Grade

MARITAL STATUS: Married

DEPENDENTS: One (Wife)

SOC. SEC. NO.: 152-36-9841

FBI NO.: 428 292 F

DATE: May 16, 1972

DOCKET NO.: Cr. 750-71

OFFENSE: Count 4, Conspiracy: Obstruction and Theft of Interstate Commerce by Force.

Title 18, USC, Section 1951.

PENALTY: Shall be fined not more than $10,000 or imprisoned not more than 20 years or both.

PLEA: On 3-16-72 pled guilty to Count 4 only of a 51 Coun Indictment before Honorable Frederick B. Lacey, Newark, New Jersey

VERDICT:

CUSTODY: Out on $50,000 bail

ASST. U.S. ATTY: Mr. Garrett Brown

DEFENSE COUNSEL: Mr. Maurice Krivit
Jersey City, N. J.
(Retained)

DETAINERS OR CHARGES PENDING: Several other Federal Indictments to be discussed at sentencing.

For local charges see Prior Record Section.

CODEFENDANTS (Disposition): Kindly refer to section titled Offense - Official Version for this material.

DISPOSITION: 12 yes imprisonment

DATE: 5-26-72

SENTENCING JUDGE: Hon. Frederick B. Lacey, Newark, N.J.

FPI NI—6-25-71-75M-6676

CRIMINAL NUMBER 750-71

This is a fifty-one count indictment charging ten defendants with Conspiracy, Obstruction of Commerce by Robbery, Interstate Transportation of Kidnapped Persons, Interstate Transportation of Stolen Goods, Receiving and Concealing Goods Stolen From Interstate Commerce, and Interstate Transportation of Stolen Motor Vehicles. Eight defendants were charged in all fifty-one counts. Two were charged in twenty-five counts, both in Counts 4 through 28. Nine defendants have entered guilty pleas to one or more violations:

DEFENDANT	CHARGES	GUILTY PLEA
Peter Picone	All Counts	5, 13, and 39
Dominick Joseph Esposito	All Counts	5
Robert Harrison	All Counts	14 and 29
John Michael Coyle	All Counts	Pending
Patrick Vincent Reo	All Counts	4
Bobby Lee Height	All Counts	5
Nicola Di Costanzo	All Counts	5
Jerry French	All Counts	5 and 47
Eddie Lee Warthen, Jr.	Counts 4 through 28	16
Richard Cherry	Counts 4 through 28	5

OFFENSE - OFFICIAL VERSION:

Count 4 charges the defendants with conspiracy in the obstruction of commerce by robbery in New Jersey from about May 10, 1971, and continuing thereafter until July 29, 1971. Actual and threatened force and violence, and fear of injury against the drivers of various laden motortrucks is charged in the conspiracy to delay commerce.

Count 5 charges the defendants with conspiracy in the commission of certain offenses against the United States in New Jersey from about May 10, 1971, and continuing thereafter until about July 29, 1971. It was part of said conspiracy to steal merchandise from interstate shipments, conceal and possess such chattels, transport in interstate commerce kidnapped drivers of motortrucks containing such goods to facilitate and conceal the theft of the motortrucks, transport the vehicles in interstate commerce, transport the stolen motortrucks in interstate commerce to facilitate possession and disposition of the goods, and to transport in interstate commerce stolen goods having a value in excess of $5,000. Count 5 charges that the defendants committed or caused to be committed 16 Overt Acts in furtherance of the conspiracy from on or about May 10, 1971 until on or about July 29, 1971.

Count 13 charges the defendants with interstate transportation of a stolen motor vehicle, a 1961 Mack tractor and 1964 Gindy trailer, from Brooklyn, New York to Jersey City, New Jersey, on or about May 18, 1971.

Count 14 charges the defendants with the interstate transportation of a kidnapped person, Itshak Bikel, from Brooklyn, New York to Englewood, New Jersey, on or about May 24, 1971. Itshak Bikel was abducted to facilitate the theft of a motortruck containing a quantity of AM-FM transistor radios. Bikel was thereafter liberated unharmed.

Count 16 charges the defendants with interstate transportation of a quantity of stolen AM-FM radios, valued in excess of $5,000., from Brooklyn, New York to Jersey City, New Jersey, on or about May 24, 1971.

Count 29 charges the defendants with the interstate transportation of a kidnapped person, William Crutchfield, from Brooklyn, New York to Newark, New Jersey, on or about June 10, 1971. William Crutchfield was abducted to facilitate the theft of a tractor-trailer containing 500 cartons of Sankyo Seiki digital clocks. Crutchfield was thereafter liberated unharmed.

Count 39 charges the defendants with the interstate transportation of a stolen motor vehicle, a Surtage Trucking Lines motortruck and two trailers, from New York, New York, to Jersey City, New Jersey, on or about June 21, 1971.

Count 47 charges the defendants with obstruction of commerce by armed robbery in Linden, New Jersey on or about July 29, 1971. The defendants took an Inland Container motortruck and its contents of 1,500 cartons of sewing machine heads from the driver while the vehicle was moving in interstate commerce from Italy, via the 60th Street Pier, Brooklyn, New York, to Port Newark, New Jersey.

DETAILS OF THE OFFENSE:

During the period of May 10, 1971 through July 29, 1971, the defendants participated in varying roles and degrees in an organized hijacking ring. The ring was responsible for the theft of sixteen truckloads of merchandise having wholesale values totaling in excess of one-half million dollars. Many vehicles valued between twenty and thirty thousand dollars each were also taken.

The modus operandi of the conspirators is as follows:

Drivers and cargo in the process of shipment were halted at gunpoint. The drivers were kidnapped, handcuffed, their identification taken to provide sources for threats against them and their families, were put in car trunks, transported interstate and held for two or three hours. One driver died from suffication or strangulation. Others were liberated unharmed.

The hijacked vehicle would be driven to an established drop and switching location. The merchandise would be transferred to rented vehicles and the hijacked vehicles would be abandoned.

Sale of the stolen merchandise to reputed Brooklyn organized crime sources was arranged by key figures in the conspiracy.

The sixth hijacking occurred on May 27, 1971. A shipment of 371 Sweda cash registers, enroute from Port Newark, New Jersey, to Des Plaines, Illinois was taken at gunpoint. The driver escaped and went to the police. The investigation resulted in a search warrant being executed for 114 Colden Street, Jersey City, which was being used by the conspirators as a storage and switching location. The warrant was executed on June 21, 1971 and portions of previous loads were located.

A new location for storage and switching of merchandise, the P. & J. truck stop in Hoboken operated by the defendant, Patrick Reo, was secured and the ring continued operations for sevdn more hijackings before all defendants were arrested.

Peter Picone and Dominick Joseph Esposito were organizers and leaders in the operation. They arranged for the storage and switching locations and operations. Esposito worked with John Michael Coyle to secure buyers for the merchandise. Picone was present in a major portion of the hijackings but remained in the background.

Jerry French and Robert Harrison were the most active members in the hijacking, kidnapping, and driving procedures. Bobby Lee Height and Eddie Lee Warthen, Jr. also functioned in this capacity to a lesser extent.

Notice this carefully

Patrick Vincent Reo assisted in the switching and disposal of stolen merchandise.

Richard Cherry spotted loads for hijacking and rented vehicles for transporting merchandise and kidnapped drivers.

Nicola Di Costanzo was a receiver.

DEFENDANT'S VERSION:

Reo affirmed his plea of guilty to the charge herein stated. He related that he met co-defendant Esposito and Coyle at a bar in West New York, New Jersey. The defendant stated that he had a garage and truck repair in Hoboken, New Jersey, and since he was not using it he permitted Esposito and Coyle to rent it from him for the amount of $500.00.

He also stated that shortly afterwards he gave up the lease on the garage and had heard that they were still using the garage. Reo admitted that he had given them, previously, the keys for the garage entrance when he rented it to them.

He also says that someone (he believes Esposito set him up) telephoned him and told him that he could make $300.00 by driving a truck, on a deserted lot, from North Bergen to Jersey City. The defendant stated that he assumed it contained stolen goods. He claimed that he was just trying to earn a living.

PRIOR RECORD:

Juvenile History

Reo appeared before Judge Robert F. Novins, Ocean County Juvenile Court on August 31, 1962. He was charged with Juvenile Delinquency specifically two complaints of Threatening Bodily Harm and Assault. He was found guilty, given a suspended $100.00 fine and was placed on probation for two years. Since he was residing in North Bergen at the time his case was transferred to the Hudson County Juvenile Probation Department. Since this case is more than five years old his juvenile records have already been destroyed. A file card though did indicate that this case was closed on January 4, 1965.

Adult Record:

11-8-65 (Age 18)	Jersey City, NJ	Disorderly Person (drunk and disorderly).	Municipal Court, 11-24-65, 90 days Hudson County Jail sentence suspended.

Reo was in the company of a Harry Rushback and a Roy Turner when he came into the Jade Restauraunt, Jersey City, and started a disturbance demanding to see his records. The arresting officers were told to "get lost" by Reo.

3-7-70 (Age 23)	Jersey City, NJ	Receiving Stolen Property (cosmetics)	Hudson County Court indicted on 12-3-71, Indictment #362-71.

The defendant was arrested at 15th Street and Jersey Avenue in Jersey City in possession of a number of boxes of cosmetics which were reportedly stolen in North Bergen on January 26, 1970.

3-25-70	U. S. Marshal, Newark, NJ	Theft from Interstate Shipment.	2-5-71 Complaint dismissed.
11-5-70	Woodbridge, NJ	Disorderly Person (Shoplifting).	Municipal Court 12-28-70 not guilty.
1-13-71 (Age 24)	Union City, NJ	Kidnapping.	Referred to Hudson County Grand Jury.

Reo and co-defendant James Lynch took the complainant John Henning for a ride in order to extort money from him. Prior to this Henning was involved in a gambling and loan shark group which were arrested on December 26, 1970 in Union City, New Jersey. Reo stated that he was only driving a friend from North Bergen to Union City.

2-14-71	North Bergen, NJ	Atrocious Assault & Battery (Shot gun).	Referred to Hudson County Grand Jury.
6-29-71	" "	Theft from Interstate Shipment.	Instant Offense.
3-22-72	" "	Atrocious Assault & Battery (Knife).	Pending Municipal Court hearing.
3-28-72	Weehawken, NJ	(1) Possession of Stolen Property, (2) Changing Serial Number on Auto.	Both referred to Hudson County Grand Jury on 3-28-72.

FAMILY HISTORY:

Patrick Vincent Reo was born to John Reo and Margaret Rice on December 26, 1946 in Jersey City. He was an only child.

He said he was raised by his mother and step-father, Frank Pascale, because his mother divorced his father when he was only two years old. Shortly after the divorce his mother married Frank Pascale. From this second marriage two half-siblings were issued, Joseph, a half-brother, age 18 and Juliann, a half-sister,

age 14, who resides with the mother in North Bergen, New Jersey. Another half-brother, Jason age 5, was issued from an illegitimate union between his mother and a police officer from Teaneck, New Jersey, who contributes for this child's support.

John Reo, the subject's father is approximately 52 years old and lives in Lakewood, New Jersey. He was a tool and die maker but lost both legs in an automobile accident in 1960. The defendant stated his father also has previous arrests in South Jersey for Bookmaking and Gambling.

Margaret Pascale, the mother, age 50, resides at 8108 Second Avenue, North Bergen. She takes care of her three children as well as being a school nurse in the Jersey City school system.

The defendant's step-father, Frank Pascale died from a brain tumor May 28, 1964.

The mother stated that the defendant was a good boy until age 14 when his step-father taught him to drive a truck. Because he was earning money it seems he began to show off. While his step-father was spoiling him, his mother stated that she was the only one who would reprimand the defendant, and he resented her for it. The defendant wants to be a boss, she continued, just like Frank was.

MARITAL HISTORY:

The defendant married Susan Presutti in a Catholic religious ceremony at St. Joseph's Church, West New York, New Jersey, on December 18, 1965. Reo was only 18 years old at this time while his wife was one year older than him. She met the defendant while attending the same high school and dropped out during the 11th year in order to marry the defendant. No children have been issued from this union. His wife stated that they have a harmonious relationship.

HOME AND NEIGHBORHOOD:

He and his wife presently reside in a four-room apartment located on the corner of Park Avenue and 74th Street in North Bergen. They have lived here for approximately two months and pay monthly rent in the amount of $245.00. There are four other families situated in this one story apartment building. The living quarters appear to be satisfactory. The area is a predominantly white middle class neighborhood.

Prior to this he lived for approximately three weeks with his mother at the North Bergen address. He also lived for a short

period of time in East Paterson and also lived at a Weehawken address for four years.

EDUCATION:

The defendant last attended North Bergen High School and quit before completing the 9th grade on January 2, 1963. He was 16 years old at this time and desired to become a full-time truck driver for his step-father. Educational records indicated that his scholastic standing was poor, as well as having an excessive amount of absenteeism. His mother stated that he had been an above average student, and when he learned to drive a truck and earn a large amount of money, he lost interest in school.

He previously attended Horace Mann and St. Joseph's Elementary Schools, both in North Bergen. He disclaimed ever being left back except possibly because of changing between schools.

RELIGION:

Reo stated that he is a Roman Catholic and occasionally attends services with his family at Lady of Fatima Church in North Bergen. His wife is also Roman Catholic and sometimes attends services at St. Joseph's Church in West New York.

INTERESTS AND ACTIVITIES:

In his leisure time he enjoys fishing as well as watching sporting events on television. He occasionally takes his wife out for dinner and a movie.

HEALTH:

The defendant is a Caucasian male standing 5' 10" tall and weighing approximately 170 pounds. He has green eyes, brown hair and a fair complexion. He has tattooes on his left and right arm as well as his left leg.

He indicated that he considered his health to be only fair at this time because of his ulcer condition. He advised that he is being treated by Dr. Abers of Jersey City and that he was hospitalized for tests in April 1971 at St. Francis Hospital, Jersey City.

Although the defendant disclaimed any use of narcotics, he did state that he was a moderate drinker of alcoholic beverages, sometimes becoming intoxicated.

This individual has a record of assaultive behaviour. His mother

even stated that she took him to several clinics for counselling and that after several sessions he refused to return. He does appear to have average intelligence.

EMPLOYMENT:

The defendant stated that for the major part of his working years he has been self-employed as a tractor-trailer driver. He related that he owns a 1964 International tractor which is paid for and that he works for Int[illegible]ocean in Weehawken, and averages approximately $80.00 to $150.00 per day.

Prior to this he worked from October 6, 1969 to January 23, 1970, as a owner-operator of a tractor-trailer for Pittsburgh and New England Trucking Company, North Bergen. Their records indicated that he resigned from his position, and that his salary was disbursed on a percentage basis. They did indicate that his performance record was satisfactory and they would consider reemploying him.

He stated that he was also employed by the Steel Division of the Standard Motor Freight Company of Secaucus, New Jersey and Russo Trucking Company of North Bergen in similar capacities.

MILITARY STATUS:

Reo stated that he was last classified 1-Y by his Local Board in Newark, and failed his physical because he had a trick knee. He did state that he tried to enlist in the Marines but was rejected for the same reason.

FINANCIAL CONDITION:

Reo stated that he has neither assets nor liabilities at this time. He did relate that his mother put up her house as collateral in order for him to be released on bail.

EVALUATIVE SUMMARY:

Patrick Vincent Reo, a 25 year old Caucasian male, pled guilty to one Count of a 51 Count Criminal Indictment and is awaiting sentencing. It appears that he became involved with this hijacking group located in Jersey City by renting them his garage, and eventually participating actively in their operation.

He has a prior record of assaultive behaviour of which several charges are pending in Hudson County at present.

Since his parents separated when he was very young, he was raised

by his mother and step-father in the North Bergen, New Jersey area. His mother related that he was a good boy until his step-father taught him how to drive a truck, and began acting like a big shot with a roll of money in his pocket. His mother had attempted to send him for counselling, but he refused treatment.

He appears to have a faithful and loving wife. They are childless.

Since becoming a truck driver at an early age, he has had no problems securing employment and is presently employed as a owner operator.

He stated that he has an ulcer condition, and also claims to imbibe in alcoholic beverages to excess at times.

Both his prior record and his active participation in this half a million dollar hijacking operation warrant his being given a custodial sentence.

Respectfully submitted,

Brayton B. Crist
Chief U. S. Probation Officer

JS:sfr

By: Joseph Stambuli, Jr.
U. S. Probation Officer

Sources of Information:

Defendant
Defendant's Wife
Assistant U. S. Attorney's Office
Local Police Bureaus
Defendant's Mother
Employers
Others